APPENDIX A.

Economy Act of June 30, 1932, providing in Title III for "Reorganization of Shipping Board", and providing in Title IV for Reorganization of Executive Agencies defined as "any commission, board, bureau, division, service, or office in the executive branch of the Government, but does not include the executive departments mentioned in Title 5, Section 1, United States Code".

The Act of Congress of June 30, 1932, "Making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes" (47 U. S. Statutes at Large 382), 72nd Congress, Sess. I., ch. 314,—which has been incorporated in part in the United States Code as U. S. Code, title 5, sections 124 et seq.—provides as follows:

"*Part I.*

Section 1. * * * Senate.

Salaries and mileage of Senators.

* * *

House of Representatives.

Salaries and mileage of Members.

* * *

Capitol Police. * * *
Joint Committee on Printing. * * *
Office of Legislative Counsel. * * *
Statement of Appropriations. * * *
Architect of the Capitol. * * *
Library Building and Grounds. * * *
Botanic Garden. * * *
Library of Congress. * * *
Library Building. * * *
Government Printing Office. * * *

"Part II.

Title I.—Furlough of Federal Employees. Furlough Provisions.

Sec. 101 [to Section 112, inclusive] * * *

Title II.—Provisions affecting Personnel. * * *

Sec. 201 [to Section 216, inclusive] * * *

Title III.—Miscellaneous Provisions.

Philippine Scouts. Sec. 301. * * *

Limitations on expenditures for Printing * * * Sec. 302 [to Section 304, inclusive] * * *

West Potomac Park Heating Plant, Sec. 305 * * *

Reorganization of Shipping Board.

Section 306 (a)

The United States Shipping Board shall be composed of three commissioners to be hereafter appointed by the President, by and with the advice and consent of the Senate. One of such commissioners shall be appointed from the States touching the Pacific Ocean, one from the States touching the Atlantic Ocean, or a navigable river directly tributary thereto, and one from the States touching the Gulf of Mexico, but not more than one shall be appointed from the same State. Not more than two of the commissioners shall be appointed from the same political party.

(b) Terms of office of the first commissioners appointed under this section, shall expire, as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, and one at the end of three years after the date of the enactment of this Act. The term of office of a successor to any such commissioner shall expire three years from the date of the expiration

of the term for which his predecessor was appointed, except that a commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term. The commissioners appointed hereunder shall hold office until their successors are appointed and qualify.

(c) Notwithstanding the provisions of subsection (a) the United Shipping Board as constituted upon the date of the enactment of this Act shall continue to function until the date of reorganization of the commission pursuant to the provisions of such subsection. The board shall be deemed to be reorganized upon such date as the three commissioners appointed as provided in such subsection have taken office, and no such commissioner shall be paid salary, as such commissioner, for any period prior to such date.

(d) This section shall be held to reorganize the United States Shipping Board, and, except as herein modified, all laws relating to such board shall remain in full force and effect, and no regulations, action, investigations, or other proceedings under any such laws existing or pending on the date of the enactment of this Act shall abate or otherwise be affected by reason of the provisions of this section.

(e) Whenever under existing law the concurrence of four or more of the commissioners is required, such requirement of law shall, after the reorganization of the board provided by this section, be held to be complied with by the concurrence of two commissioners.

(f) $200,000 of the unexpended balance of the allotment of $500,000 made available to the United States Shipping Board Merchant Fleet Corporation

for experimental and research work, by the Independent Offices Appropriation Act, fiscal year 1930, and continued by subsequent appropriation Acts, shall not be expended, but shall be covered into the Treasury as miscellaneous receipts.

(g) The sums available for expenditure, during the fiscal year ending June 30, 1933, for personal services of employees of the United States Shipping Board Merchant Fleet Corporation assigned to and serving with the United States Shipping Board are reduced by $167,000 from the pay roll of March 31, 1932, and the amounts of reduction applicable to the various bureaus shall be as follows: (1) Bureau of Research, $30,000, (2) Bureau of Law, $103,000, (3) Bureau of Traffic, $9,000, (4) Bureau of Construction, $5,000, and (5) Bureau of Operations, $20,000.

(h) The United States Shipping Board Merchant Fleet Corporation, shall, during the fiscal year ending June 30, 1933, transfer from the operating funds and cover into the Treasury as miscellaneous receipts the sum of $1,938,240.

Increase in Certain Charges and Fees. Sec. 307 [to Section 314, inclusive]. * * *

Restrictions on Transfer of Army and Navy Personnel. Sec. 315. * * *

Statistics concerning Hides, Skins, and Leather. Sec. 316. * * *

Transfer of appropriations. Sec. 317. * * *

Vocation education. Sec. 318. * * *

Rate of interest on judgments and overpayments. Sec. 319. * * *

Restriction of construction and rental of buildings. Sec. 320 [to Section 322, inclusive]. * * *

Temporary reduction of fees of jurors and witnesses. Sec. 323. * * *

Title IV.—Reorganization of Executive Departments.

Declaration of Policy.

Sec. 401. In order to further reduce expenditures and increase efficiency in government it is declared to be the policy of Congress——

(a) To group, coordinate, and consolidate executive and administrative agencies of the Government, as nearly as may be, according to major purpose;

(b) To reduce the number of such agencies by consolidating those having similar functions under a single head;

(c) To eliminate overlapping and duplication of effort; and

(d) To segregate regulatory agencies and functions from those of an administrative and executive character.

Definitions.

Sec. 402. When used in this title——

(1) The term 'executive agency' means any commission, board, bureau, division, service, or office in the executive branch of the Government, but does not include the executive departments mentioned in title 5, section 1, United States Code.

(2) The term "independent executive agency" means any executive agency not under the jurisdiction or control of any executive department.

Power of President.

Sec. 403. For the purpose of carrying out the policy of Congress as declared in section 401 of this title, the President is authorized by Executive order——

(1) To transfer the whole or any part of any independent executive agency, and/or the functions thereof, to the jurisdiction and control of an executive department or another independent executive agency;

(2) To transfer the whole or any part of any executive agency, and/or the functions thereof, from the jurisdiction and control of one executive department to the jurisdiction and control of another executive department; or

(3) To consolidate or redistribute the functions vested in any executive department or in the executive agencies included in any executive department; and

(4) To designate and fix the name and functions of any consolidated activity or executive agency and the title, powers and duties of its executive head.

Sec. 404. The President's order directing any transfer or consolidation under the provisions of this title shall also designate the records, property (including office equipment), personnel, and unexpended balances of appropriations to be transferred.

Saving Provisions.

Sec. 405. (a) All orders, rules, regulations, permits, or other privileges made, issued, or granted by or in respect of any executive agency or function transferred or consolidated with any other executive agency or function under the provisions of this title, and in effect at the time of the transfer or consolidation, shall continue in effect to the same extent as if such transfer or consolidation had not occurred, until modified, superseded, or repealed.

(b) No suit, action, or other proceeding lawfully commenced by or against the head of any department or executive agency or other officer of the United States, in his official capacity or in relation to the discharge of his official duties, shall abate by reason of any transfer of authority, powers, and duties from one officer or executive agency of the Government to another under the provisions of this title, but the court, on motion or supplemental petition filed at any time within twelve months after such transfer takes effect, showing a necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, may allow the same to be maintained by or against the head of the department or executive agency or other officer of the United States to whom the authority, powers, and duties are transferred.

(c) All laws relating to any executive agency or function transferred or consolidated with any other executive agency or function under the provisions of this title, shall, in so far as such laws are not inapplicable, remain in full force and effect, and shall be administered by the head of the executive agency to which the transfer is made or with which the consolidation is effected.

Statutory Agencies.

Sec. 406. Whenever, in carrying out the provisions of this title, the President concludes that any executive department or agency created by statute should be abolished and the functions thereof transferred to another executive department or agency or eliminated entirely the authority granted in this title shall not apply, and he shall report his conclusions to

Congress, with such recommendations as he may deem proper.

Disapproval of Executive Order.

Sec. 407. Whenever the President makes an Executive order under the provisions of this title, such Executive order shall be transmitted to the Congress while in session and shall not become effective until after the expiration of sixty calendar days after such transmission, unless Congress shall sooner approve of such Executive order or orders by concurrent resolution, in which case said order or orders shall become effective as of the date of the adoption of the resolution: Provided, That if Congress shall adjourn before the expiration of sixty calendar days from the date of such transmission such Executive order shall not become effective until after the expiration of sixty calendar days from the opening day of the next succeeding regular or special session: Provided further, That if either branch of Congress within such sixty calendar days shall pass a resolution disapproving of such Executive order, or any part thereof, such Executive order shall become null and void to the extent of such disapproval: Provided further, That in order to expedite the merging of certain activities, the President is authorized and requested to proceed, without the application of this section, with setting up consolidations of the following governmental activities: Public Health (except that the provisions hereof shall not apply to hospitals now under the jurisdiction of the Veterans' Administration), Personnel Administration, Education (except the Board of Vocational Education shall not be abolished), and Mexican Water and Boundary Commission, and to merge such activities, ex-

cept those of a purely military nature, of the War and Navy Departments as, in his judgment, may be common to both and where the consolidation thereof in either one of the departments will effect economies in Federal expenditures, except that this section shall not apply to the United States Employees' Compensation Commission.

Report to Congress.

Sec. 408. The President shall report specially to Congress at the beginning of each regular session any action taken under the provisions of this title, with the reasons therefor.

Title V.—Particular consolidations effected.

Bureau of Navigation and Steamboat Inspection. Sec. 501 [to Section 504, inclusive]. * * *

Transfer of Personnel Classification Board to Civil Service Commission. Sec. 505 [to Section 508, inclusive]. * * *

International Water Commission Abolished. Sec. 510. * * *

Transfer of Radio Division of the Department of Commerce to the Federal Radio Commission. Sec. 511 [to Section 513, inclusive]. * * *

Title VI.—Interdepartmental Work. Sec. 601 [and Section 602]. * * *

Title VII.—Provisions applicable to Veterans. Sec. 701. * * *

Title VIII.—Special Provisions.

Separability Clause.

Sec. 801. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision

to other persons or circumstances, shall not be affected thereby.

Suspensions and Repeals.

Sec. 802. All Acts and parts of Acts inconsistent or in conflict with those provisions of this Act which are of temporary duration are hereby suspended during the period in which such provisions of this Act are in effect. All Acts or parts of Acts inconsistent or in conflict with those provisions of this Act which are of permanent nature are hereby repealed to the extent of such inconsistency or conflict.

Provisions of Part 2 Applicable to Appropriation Acts for Fiscal Year 1933.

Sec. 803. The provisions of Part 2 herein are hereby made applicable to the appropriations available for the fiscal year 1933, whether contained in this Act or in Acts prior or subsequent to the date of the approval of this Act. Approved, June 30, 1932." (Black face type in Titles III and IV ours.)

APPENDIX B.

Amendment of March 3, 1933, to Economy Act of June 30, 1932, amending Title IV in several respects and changing definition of Executive Agency to read: "Any commission, independent establishment, board, bureau, division, service, or office in the executive branch of the Government and, except as provided in Section 403, includes the executive departments"; but not amending or repealing Title III of the Economy Act of June 30, 1932.

The Act of Congress of March 3, 1933, "Making appropriations for the Treasury and Post Office Depart-

ments for the fiscal year ending June 30, 1934, and for other purposes" (47 U. S. Statutes at Large 1489), 72nd Congress, Sess. II., ch. 212, provides as follows:

"**Title I.**—Treasury Department. * * *

Title II.—Post Office Department. * * *

Sec. 2. [Appropriations for travel expenses] * * *

Sec. 3. [Restrictions on expenditures for automobiles] * * *

Sec. 4. [Continuing in force for another year sections 101 to 109, 112, 201, 203, 205, 206, 211, 214, 216, 304, 315, 317, 318, and 323 of the Legislative Appropriations Act, fiscal year 1933, etc.] * * *

Sec. 5. [Limitation on reduction of annual compensation] * * *

Sec. 6. [Annual leave provisions] * * *

Sec. 7. [Administrative promotions] * * *

Sec. 8. [Annuity of officers reaching retirement age] * * *

Sec. 9. [Allowance for motorcycles and automobiles] * * *

Sec. 10. [Travel expenses] * * *

Sec. 11. [Saturday half holiday] * * *

Sec. 12. [Foreign assignments of Army officers] * * *

Sec. 13. [Judgments recovered against United States under Act of March 3, 1875] * * *

Section 14. Section 319 of Part II of the Legislative Appropriation Act, fiscal year 1933, is repealed as of June 30, 1932; and the rate of interest to be allowed upon judgments against

the United States and overpayments in respect of internal-revenue taxes shall be the rate applicable thereto prior to the enactment of section 319 of such Act.

Sec. 15. Section 322 of Part II, of the Legislative Appropriation Act, fiscal year 1933, is amended by adding at the end of the section the following proviso: 'Provided further, That the provisions of this section as applicable to rentals, shall apply only where the rental to be paid shall exceed $2,000 per annum.'

Sec. 16. Title IV of Part II of the Legislative Appropriation Act, fiscal year 1933, is amended to read as follows:

'Title IV.—Reorganization of Executive Departments

'Declaration of Standard

'Sec. 401. The Congress hereby declares that a serious emergency exists by reason of the general economic depression; that it is imperative to reduce drastically governmental expenditures; and that such reduction may be accomplished in great measure by proceeding immediately under the provisions of this title.

'Accordingly, the President shall investigate the present organization of all executive and administrative agencies of the Government and shall determine what changes therein are necessary to accomplish the following purposes:

'(a) To reduce expenditures to the fullest extent consistent with the efficient operation of the Government;

'(b) To increase the efficiency of the operations of the Government to the fullest extent practicable within the revenues;

'(c) To group, coordinate, and consolidate executive and administrative agencies of the Government, as nearly as may be, according to major purposes;

'(d) To reduce the number of such agencies by consolidating those having similar functions under a single head, and by abolishing such agencies and/or such functions thereof as may not be necessary for the efficient conduct of the Government;

'(e) To eliminate overlapping and duplication of effort; and

'(f) To segregate regulatory agencies and functions from those of an administrative and executive character.

'Definition of Executive Agency

'Sec. 402. When used in this title, the term "executive agency" means any commission, independent establishment, board, bureau, division, service, or office in the executive branch of the Government and, except as provided in section 403, includes the executive departments.

'Power of President.

'Sec. 403. Whenever the President, after investigation, shall find and declare that any regrouping, consolidation, transfer, or abolition of any executive agency or agencies and/or the functions thereof is necessary to accomplish any of the purposes set forth in section 401 of this title, he may by Executive order—

'(a) Transfer the whole or any part of any executive agency and/or the functions thereof to the jurisdiction and control of any other executive agency;

'(b) Consolidate the functions vested in any executive agency; or

'(c) Abolish the whole or any part of any executive agency and/or the functions thereof; and

'(d) Designate and fix the name and functions of any consolidated activity or executive agency and the title, powers, and duties of its executive head; except that the President shall not have authority under this title to abolish or transfer an executive department and/or all the functions thereof.

'Sec. 404. The President's order directing any transfer, consolidation, or elimination under the provisions of this title shall also make provision for the transfer or other disposition of the records, property (including office equipment), and personnel, affected by such transfer, consolidation, or elimination. In any case of a transfer or consolidation under the provisions of this title, the President's order shall also make provision for the transfer of such unexpended balances of appropriations available for use in connection with the function or agency transferred or consolidated, as he deems necessary by reason of the transfer or consolidation, for use in connection with the transferred or consolidated function or for the use of the agency to which the transfer is made or of the agency resulting from such consolidation.

'Saving Provisions.

'Sec. 405. (a) All orders, rules, regulations, permits, or other privileges made, issued, or granted by or in respect of any executive agency or function transferred or consolidated with any other executive agency or function under the provisions of this title, and in effect at the time of the transfer or consolidation, shall con-

time in effect to the same extent as if such transfer or consolidation had not occurred, until modified, superseded, or repealed.

'(b) No suit, action, or other proceeding lawfully commenced by or against the head of any executive agency or other officer of the United States, in his official capacity or in relation to the discharge of his official duties, shall abate by reason of any transfer of authority, power, and duties from one officer or executive agency of the Government to another under the provisions of this title, but the court, on motion or supplemental petition filed at any time within twelve months after such transfer takes effect, showing a necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, may allow the same to be maintained by or against the head of the executive agency or other officer of the United States to whom the authority, powers, and duties are transferred.

'(c) All laws relating to any executive agency or function transferred or consolidated with any other executive agency or function under the provisions of this title, shall, in so far as such laws are not inapplicable, remain in full force and effect, and shall be administered by the head of the executive agency to which the transfer is made or with which the consolidation is effected.

'Winding Up Affairs of Agencies.

'Sec. 406. In the case of the elimination of any executive agency or function, the President's order providing for such elimination shall make provision for winding up the affairs of the executive agency eliminated or the affairs of the executive agency with re-

spect to the functions eliminated, as the case may be.

'Effective Date of Executive Order.

'Sec. 407. Whenever the President makes an Executive order under the provisions of this title, such Executive order shall be submitted to the Congress while in session and shall not become effective until after the expiration of sixty calendar days after such transmission, unless Congress shall by law provide for an earlier effective date of such Executive order or orders; Provided, That if Congress shall adjourn before the expiration of sixty calendar days from the date of such transmission such Executive order shall not become effective until after the expiration of sixty calendar days from the opening day of the next succeeding regular or special session.

'Appropriations Impounded.

'Sec. 408. The appropriations or portions of appropriations unexpended by reason of the operation of this title shall not be used for any purpose but shall be impounded and returned to the Treasury.

'Termination of Power.

'Sec. 409. The authority granted to the President under section 403 shall terminate upon the expiration of two years after the date of enactment of this Act unless otherwise provided by Congress.'

'Sec. 17. The Bureau of Efficiency and the office of chief of such bureau are hereby abolished; and the President is authorized to designate another officer to serve in place of the Chief of the Bureau of Efficiency on any board, commission, or other agency of which the Chief

of the Bureau of Efficiency is now a member. All records and property, including office furniture and equipment of the bureau, shall be transferred to the Bureau of the Budget. Appropriations and unexpended balances of appropriations available for expenditure by the Bureau of Efficiency shall be impounded and returned to the Treasury. This section shall take effect at the beginning of the third calendar month after the passage of this Act.

'SEC. 18. So much of sections 9 and 10 of the Act entitled 'An Act to readjust the pay and allowances of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service', approved June 10, 1922 (U. S. C., title 37, secs. 13 and 16), as provides for the payment of enlistment allowance to enlisted men for reenlistment within a period of three months from date of discharge is hereby suspended as to reenlistments made during the fiscal year ending June 30, 1934.

'SEC. 19. (a) The Court of Claims of the United States is authorized and directed, under such rules as it may prescribe, to impose a fee in an amount not in excess of $10 to be fixed by the court for the filing of any petition in any case instituted after the enactment of this Act, and for the hearing of any case before the court, a judge, or a commissioner thereof, pending at the time of the enactment of this Act.

'(b) The court is authorized and directed to charge and collect a fee of 10 cents a folio for preparing and certifying a transcript of the record for the purpose of a writ of certiorari

sought by the plaintiff and for furnishing certified copies of judgments or other documents in cases in said court: Provided, That not less than $5 shall be charged for each certified copy of findings of fact and opinion of the court to be filed in the Supreme Court of the United States.

'(c) The court is also authorized and directed to charge and collect for each certified copy of its findings of fact and opinion a fee of 25 cents for five pages or less, 35 cents for those over five and not more than ten pages, 45 cents for those over ten and not more than twenty pages, and 50 cents for those of more than twenty pages.

'(d) The clerk of the Court of Claims shall account to the Attorney General for all such fees and shall deposit such fees to the credit of the Treasurer of the United States in the same manner as is provided in the case of collections by clerks of district courts as provided by section 9 of the Act entitled "An Act to fix the salaries of clerks of the United States district courts and to provide for their office expenses, and for other purposes", approved February 26, 1919, as amended (U. S. C., title 28, sec. 567).'

Title III.

SEC. 1. That when used in this title—

(a) The term 'United States', when used in a geographical sense, includes the United States and any place subject to the jurisdiction thereof;

(b) The terms 'public use', 'public building', and 'public work' shall mean use by,

public building of, and public work of, the United States, the District of Columbia, Hawaii, Alaska, Puerto Rico, the Philippine Islands, American Samoa, the Canal Zone, and the Virgin Islands.

Sec. 2. Notwithstanding any other provision of law, and unless the head of the department or independent establishment concerned shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use. This section shall not apply with respect to articles, materials, or supplies for use outside the United States, or if articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Sec. 3. (a) Every contract for the construction, alteration, or repair of any public building or public work in the United States growing out of an appropriation heretofore made or hereafter to be made shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and

only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States except as provided in section 2: Provided, however, That if the head of the department or independent establishment making the contract shall find that in respect to some particular articles, materials, or supplies it is impracticable to make such requirement or that it would unreasonably increase the cost, an exception shall be noted in the specifications as to that particular article, material, or supply, and a public record made of the findings which justified the exception.

(b) If the head of a department, bureau, agency, or independent establishment which has made any contract containing the provision required by subsection (a) finds that in the performance of such contract there has been a failure to comply with such provisions, he shall make public his findings, including therein the name of the contractor obligated under such contract, and no other contract for the construction, alteration, or repair of any public building or public work in the United States or elsewhere shall be awarded to such contractor, subcontractors, material men, or suppliers with which such contractor is associated or affiliated, within a period of three years after such finding is made public.

Sec. 4. This title shall take effect on the date of its enactment, but shall not apply to any contract entered into prior to such effective date.

Sec. 5. If any provision of this Act, or the application thereof to any person or circum-

stances, is held invalid, the remainder of the Act, and the application thereof to other persons or circumstances, shall not be effected thereby.

Approved, March 3, 1933."

APPENDIX C.

Amendment of March 20, 1933, to Economy Act of une 30, 1932, amending Title IV with respect to submission to Congress while in session of Executive Orders ssued under Title IV of the Economy Act of June 30, 932; but not amending or repealing Title III of the conomy Act of June 30, 1932.

The Act of Congress of March 20, 1933 "to maintain ne credit of the United States Government" (48 U. S. tatutes at Large 16), 73rd Congress, Sess. II, Chapter provides as follows:

"AMENDMENTS TO LEGISLATIVE APPROPRIATION ACT, FISCAL YEAR, 1933.

Section 1. Sections 407 and 409 of Title IV of Part II of the Legislative Appropriation Act, fiscal year 1933, as amended by section 17 of the Treasury and Post Office Appropriation Act, approved March 3, 1933, are amended to read as follows:

'Sec. 407. Whenever the President makes an Executive order under the provisions of this title, such Executive order shall be submitted to the Congress while in session and shall not become effective until after the expiration of sixty calendar days after such transmission, unless Congress shall by law provide for an earlier effective date of such Executive order or orders.

'Sec. 409. No Executive order issued by the President in pursuance of the provisions of section 403 of this title shall become effective unless transmitted to the Congress within two years from the date of the enactment of this Act.'

Approved, March 20, 1933."

APPENDIX D.

Legislative Debates in Congressional Record.

Senator White stated (Cong. Rec., Vol. 77, p. 6154):

"MR. WHITE. Mr. President, I shall not undertake to offer an amendment to the proposal made by the Senator from Oregon. I cannot, however, permit this joint resolution to pass without indicating my grave doubt as to the wisdom of transferring in their entirety the functions and the responsibilities of the Shipping Board to the Department of Commerce.

The Shipping Board and the Emergency Fleet Corporation have a multitude of duties and responsibilities. There are many operative functions of both which I think might well be transferred to the Department of Commerce, but the Shipping Board is a regulatory body, having quasi-judicial functions. It has a wide range of authority over water rates in both interstate and foreign commerce. It has jurisdiction, and it acts, when it exercises that jurisdiction, in a judicial capacity, over rates, rebates, discriminations, preferences and practices of water carriers and all manner of questions of that sort. *It is utterly inconceivable to me that those authorities can properly be transferred to and be exercised by an official of the Department of Commerce.*

> I have grave fear that whatever of value there is in the present law, with respect to the regulation and control of rates and practices of steamship companies in both our interstate and in our foreign commerce will be lost by this wholesale transfer. I fear we shall, by this transfer, render ineffective a large body of law designed to control water carriers and to protect shippers. I want this expression of my views to be of record." (Italics ours.)

The quotation at page 68 of respondents' brief from Representative Mapes' statement in the Congressional Record (Cong. Rec., Vol. 75, Pt. 8, p. 9264) is not a fair summary of Mr. Mapes' statements in the Congressional Record taken as a whole. He later (evidently after more careful investigation and consideration of the matter) stated (Cong. Rec., Vol. 76, p. 3945 under date of February 10, 1933):

> "This and preceding Congresses have refused to give the President power to reorganize the departments, to say nothing of abolishing them; and it should be kept in mind that this administration has never asked Congress to clothe the President with any such power as is proposed in the Senate amendment. Among other objections to the provision *there is serious doubt as to its constitutionality.* The independent commissions and the bureaus in the different departments have been created by express statutory enactments. Can they be abolished without the passage of legislation expressly repealing the statutes which created them?" (Italics ours.)

Representative Snell stated (Cong. Rec., Vol. 76, p. 3943, under date of February 10, 1933):

> "As far as I know, the present President has never suggested that he be given the *right to absolutely abolish definite functions of the Government*

that have been established by law, certainly not without a review by Congress." (Italics ours.)

Representative Whittington stated (Cong. Rec., Vol. 76, p. 4695) under date of February 21, 1933:

"I favor the reorganization provisions. The President will be given the power and authority to group, coordinate, and consolidate executive and administrative agencies, to reduce the number of such agencies by consolidation, those having similar functions under a single head, to eliminate overlapping, and to segregate regulatory agencies and functions from those of executive and administrative agencies.

The President would be given the power to transfer, consolidate, or abolish executive agencies or the functions thereof, with the further power to designate and fix the names and functions of any consolidated agencies.

The economy act of 1932 conferred substantially the same power upon the President. That act did not give the President the power to abolish any statutory agency. He was requested to make recommendations to Congress relating to the abolition of any agency or bureau of statutory origin. On December 9, 1932, President Hoover made recommendations for certain transfers and consolidations. It is worthy of note that he merely recommended the abolition of some three or four insignificant statutory agencies. Among all the 58 consolidations he recommended the abolition of 3 or 4 statutory agencies, to wit, the Office of Public Buildings and Parks, the Employees' Compensation Commission, and the board of trustees of National Training School for Boys.

The President is given power respecting executive agencies. Under the provisions of the amendment the President has no authority to abolish or

transfer any executive department or the functions thereof.

Executive departments are established by law. Executive agencies and departmental bureaus are generally established by Executive orders. The power thus conferred by the President is very largely the power to consolidate, eliminate, or abolish the agencies established by the Executive, rather than by Congress. If the President has the inherent power to establish an agency within a bureau or an executive department, it must follow that he has the power to eliminate or abolish." (Italics ours.)

Representative Woodrum stated (Cong. Rec., Vol. 76, p. 3946):

"An examination of the plan the President sent to Congress showed the remarkable and startling fact that he had taken bureaus and activities one after another and slapped them together without once conferring or advising with the heads of the respective departments or anybody in Congress who ought to have accurate information as to what the effect of that consolidation would be.

I can name bureau after bureau that the President undertook to consolidate without ever securing accurate information from the activities affected."

Representative Wood stated (Cong. Rec., Vol. 76, pp. 4687-4692, under date of February 21, 1933):

"Mr. Wood of Indiana. Mr. Speaker, I appreciate the situation in which we find ourselves with reference to economizing in the expenses of government. I wish I had time to lay the responsibility for our present condition where it belongs.

The Constitution of the United States very definitely prescribed three distinct attributes of

government—the legislative, the executive, and the judicial. If this Government is to endure these three distinctions must be maintained.

I appreciate the fact that the Government is expending today more money than it should be expending for the conduct of its affairs. I appreciate the fact that there is duplication and overlapping in almost every department. I appreciate the fact that it is a great trial to destroy and undo these things. I appreciate the fact that this Congress is now confronted, as perhaps it never before has been confronted, with the responsibility of undoing that for which it is responsible.

There is not a waste in the Government but what the Congress of the United States is responsible for. There is not a duplication in government but what the Congress of the United States is responsible for. There is not an overlapping of jurisdiction but what the Congress of the United States is responsible for. Not one of these things ever could have existed but for the action of Congress.

Time and again I have inveighed against the practice of Congress in creating bureaus or commissions and giving them the right to adopt rules and regulations for their conduct. This practice has gone on to such an extent that we find ourselves today not a democratic form of government, but a bureaucratic form of government; and we can not deny our responsibility or the responsibility of the Congresses that have gone before us.

It occurs to me that by reason of this responsibility it is the part of cowardice for this Congress now to say that we are not capable of undoing, or able to undo, the evil that Congress has created. [Applause.] To do so is to confess that this branch of the Government founded by the fathers has become impotent. If it be so, how long in the future will it be until this branch of Government may say

that the judicial part of it likewise has become impotent? * * *

There have been inflictions upon the Constitution here before. They were had during a period of stress far greater than that in which we now find ourselves. Some of them were had within the memory of many now living, within the knowledge of all of you who have read the history of the Civil War. The Constitution of the United States was then violated, violated, and violated again and again because of the necessity of war. Does that necessity now exist? Are we to confess that we are in a state of war? We are possibly in a condition incident to the necessities of war, but we are not in a position to give ourselves the right to take advantage of the necessities of war, unless we confess our utter inability to solve this peace-time problem.

* * * We are not in a position to give ourselves the right to take advantage of the necessities of war, unless we confess we are not any longer enabled by the legislative branch of this Government to do for the interests of the Government that which we are bound to do under the Constitution of the United States.

* * *

Now, are we to say that by reason of the distress in which we find ourselves we are going to abdicate the duties imposed upon the Congress of the United States in controlling the purse strings of this Government, which are the greatest guarantee of the people in security of a democratic government, and say that we are unable to longer control the expenditures of government or longer control the functions of government, and that we are going to abdicate and put all these things in the hands and power of one man?

I say to confess that is to confess that this form

of government of ours is a failure, and to confess that we have started upon the period of our decadence.

I wish to call your attention to something that was said by the Supreme Court of the United States some years ago which is just as patent now as it was at the time when the utterance was made.

> The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government within the Constitution has all the powers granted to it which are necessary to preserve its existence as has been happily proved by the result of the great effort to overthrow its just authority.

There has been trial after trial to overthrow the authority of this Government. There has been attempt after attempt to overthrow the duties imposed upon the three divisions of our Government. Happily, up to this time, with here and there an exception, we have maintained these three distinct attributes of our Government that have made us what we are. If they are to be destroyed now or if we are to attempt to undermine them now, we will be responsible for the consequences that are sure to come.

This was said by Mr. Bryce 40 years ago when he wrote his wonderful book, and I wish every right-thinking man would read it and ponder its provisions now. What was said then seemed to be

merely conjectural, but now seems to be prophecy ripening into fulfillment.

He thought then, as I believe now, that if this Government is to endure it will be because of our adherence to our three fundamental principles and divisions of government. * * *

I also invite your attention to the following citation from the American Commonwealth, by Bryce, volume 2, pages 711, 712, and 713:

> The next question to be asked relates to the component parts of the National Government itself. Its equilibrium stands now as stable as at any former epoch. Yet it has twice experienced violent oscillations. In the days of Jackson, and again in those of Lincoln, the Executive seemed to outweigh Congress. In the days of Tyler Congress threatened the Executive, while in those of Andrew Johnson it reduced the Executive to impotence. That no permanent disturbance of the balance followed the latter of these oscillations shows how well the balance had been adjusted at starting. At this moment there is nothing to show that any one department is gaining on any other. The judiciary, if indeed the judges can be called a political department, would seem to have less discretionary power than 70 years ago, for by their own decisions they have narrowed the scope of their discretion, determining points in which, had they remained open, the personal impulses and view of the bench might have had room to play.
>
> Congress has been the branch of government with the largest facilities for usurping the powers of the other branches, and probably with the most disposition to do so. Congress has constantly tried to encroach both on the Executive and on the States, sometimes, like a wild bull driven into a corral, dashing itself against the imprisoning

walls of the Constitution. But although Congress has succeeded in occupying nearly all of the area which the Constitution left vacant and unallotted between the several authorities it established, Congress has not become any more distinctly than in earlier days the dominant power in the State, the organ of national sovereignty, the irresistible exponent of the national will. In a country ruled by public opinion, it could hold this position only in virtue of its capacity for leading opinion, that is to say, of its courage, promptitude, and wisdom. Since it grows in no one of these qualities, it wins no greater ascendancy; indeed its power, as compared with that of public opinion, seems rather to decline. Its division into two coordinate Houses is no doubt a source of weakness as well as of safety. * * *

The weakness of Congress is the strength of the President. Though it can not be said that his office has risen in power or dignity since 1789, there are reasons for believing that it may reach a higher point than it has occupied at any time since the Civil War. The tendency everywhere in America to concentrate power and responsibility in one man is unmistakable. There is no danger that the President should become a despot, that is, should attempt to make his will prevail against the will of the majority. But he may have a great part to play as the leader of the majority, and the exponent of its will.

He is in some respects better fitted both to represent and to influence public opinion than Congress is. No doubt he suffers from being the nominee of a party, because this draws on every act he does the hostility of zealots of the opposite party. But the number of voters who are not party zealots increases—increases from bad causes as well as from good causes—for as a capable President sways the dispassionately

patriotic, so a crafty President can find means of playing upon those who have their own ends to serve. A vigorous personality attracts the multitude, and attracts it the more the huger it grows; while a Chief Magistrate's influence excites little alarm when exerted in leading a majority which acts through the constitutional organs of government. There may, therefore, be still undeveloped possibilities of greatness in store for the Presidents of the future. But as these possibilities depend, like the possibilities of the British and German Crowns—perhaps one may add of the papacy—on the wholly unpredictable element of personal capacity in the men who may fill the office, we need speculate on them no further.

Will we not lose the respect and confidence of the Nation if we make an abject surrender of our right to legislate and confer this authority upon one man?

* * *

While I realize the extremis in which we are placed, while I realize the necessity of retrenchment, do not let us adopt, without due consideration, a temporary cure that will be a disease that will undermine like a cancer and destroy the fabric of the Government that our fathers established—not for us but for the generations yet to come. Let us not adopt something new and untried in the history of government, but let us be sure that our government of the people, by the people, and for the people is to endure.

Mr. McGugin. Will the gentleman yield?

Mr. Wood of Indiana. I yield.

Mr. McGugin. I am in full sympathy with what the gentleman has to say as a matter of Government principle, but does the gentleman have any idea from his long experience in Congress that Congress will materially reduce the expenses of Government or consolidate any bureaus of Government?

Mr. Wood of Indiana. I do not know whether it will or not. It depends upon the courage of the individual Congressman. [Applause.] It depends largely upon the sentiment of his constituents behind him.

I wish the whole country might know the extremis which we are in. They do not know it. I wish they might know the problems that we are called upon to meet. They do not know them. I wish we might be impressed with the responsibility that is resting upon us. I wish that the incoming President might realize, as I fear he does not, the responsibility that is his, because on his shoulders is going to be placed the greatest responsibility of government that has ever befallen any man that has ever become President of the United States with the possible exception of Lincoln.

Mr. Rich. Will the gentleman yield?

Mr. Wood of Indiana. I yield.

Mr. Rich. The gentleman has made the statement that if we, as Congressmen, realized our responsibility, we might be able to reduce Government expenditures. I feel from what we have accomplished during this session of Congress, it is hard to cause Congress to realize its responsibility, and when it is said that taxation is resting so hard upon the shoulders of the people of this country, the only thing to do is to reduce expenses, and how are we going to do this if Congressmen will not assume their responsibility?

Mr. Wood of Indiana. Well, that is the fault of the Congress itself. I am not here for the purpose of defending anybody's proposal, but I am here to charge this Congress with the responsibility of meeting the problem that is before it, and we are not doing it. We are putting it off to another day, we are putting it off to the next session of the Congress of the United States. We are shirking our responsibility.

Now I wish to call your attention to a few more details.

February 21, 1932, one year ago today, the Democratic National Committee issued a statement by John N. Garner, Speaker of this House, criticizing President Hoover for his economic program. The closing paragraphs of that statement contain the following:

> Now he (Hoover) has sent us a recommendation for the reorganization of the Government. Briefly, it consists in a suggestion that Congress abdicate its prerogatives and give him blanket power to appoint a lot of new officers and make the Government anything he pleases. Why did he not send us his actual program? * * * Why has he not told us what he proposes doing, so that we could accurately judge of the value of his suggestions, instead of adopting his proposal that we leave it all to him. Well, we are not going to grant any such unlimited charter. We, too, have our ideas as to how to effect improvements and economies in the national administration. If the President is sincerely desirous of such improvement, there is no reason why we should not get together. If he did that, we could cooperate. What he seeks, instead, is to dictate, and nobody can dictate to the Democratic group in Congress.

Think of it! The gentleman from Texas [Mr. Garner] was criticizing the President's asking to leave it all to him.

Now what are you doing? The President of the United States never asked to destroy a single function of the Government; he never asked for the power now asked to destroy a single attribute of the Government. All he asked was the power to consolidate and amalgamate by preventing overlapping and preventing duplication, and thus save expense to the Government.

You are asked to give power to your President, and he is my President as well; you are asking that he be given authority, not only to do these things which the present President asked, but also that he be given power to destroy.

That is not and should not be a function under the Constitution lodged in the President. If you give him the power to destroy, you must give him the power to create. If he has the right to destroy any given departments of the Government, he has the right to create some other department of that Government.

That we deny. The Constitution denies it, and to admit it is to abdicate the functions of the Constitution imposed upon us.

* * *

The simon-pure Democracy of neither the Baltimore Sun nor Mr. Kent can be disputed. In fact, the Baltimore Sun is the only outstanding Democratic paper in this section of the United States, and opinions are quoted in Democratic councils throughout the country. Mr. Kent says:

> It is a more or less amazing spectacle to see Democratic leaders, on the eve of their party's coming into control of the Congress, throwing up their hands and publicly saying in effect: 'We can not be trusted to do what we were elected to do. Despite our control of both branches of the Congress, we will never be able to function. The only thing to do is to take away the power the Constitution of the United States gives us and put it in the hands of the President. We can't be trusted. We can't even trust ourselves. We have control, but we can't use it.'
>
> Mr. Kent continues:
>
> If ever there was a more extraordinary confession by public leaders of their own incapacity than this, it can not be recalled. Yet the facts

as made plain at this session amply justify it, and if an abdication does not take place by March 4; it will only be because of Republican opposition.

That was the Democratic attitude in 1880. Now they turn about and advocate your giving the President more power than it ever gave a king, except in the days of absolute kingdoms. No democracy was ever confronted with such a proposition that we are now confronted with.

For years the Democratic Party has gone before the public in each national campaign with the catchy slogan, 'Let the People Rule,' and pretended it was a party which was opposed to anything but the most simon-pure democratic form of government. * * *

And now you are not only misusing your delegated power but you are delegating the power that the people gave to you. You are abdicating your responsibility and the duties imposed upon you by the Constitution under the provisions of the bill now before us.

* * *

The reason for this action today is not that which is offered in explanation for it or in extenuation of it. It is offered not for the purpose of increasing the efficiency of the Federal Government. The real explanation is that given by Mr. Kent, namely, that the Democratic Party as it exists today in Congress finds itself utterly unable to legislate along the lines it pledged the people it would legislate. Its membership finds itself totally incapacitated to perform the legitimate functions that the legislative branch of this Government is, under the Constitution, mandated to perform. Again I do not desire this severe stricture to be charged up against Republican partisanship. I make this charge upon the authority of no less a distinguished Democrat than John N.

Garner, present Speaker of the House and Vice President elect. On the 8th day of this month the public press carried a statement issued by Mr. Garner, in which he said:

> It has been actually demonstrated the Congress can not reduce Government expenses as it should be done. There are three or four outstanding organized minorities in this country which work to prevent Congress from effecting reorganization and economy.

And right here let me say that Mr. Garner expressed the truth when he said that this Congress is controlled by minority representation in this country, and it is one of the curses of this country. There is no organization representing the people, but we have minority organizations representing every kind of selfish interests constantly prevailing upon each individual Member of this Congress by every means possible to do their bidding.

Mr. Speaker, in the language I have quoted from Mr. Garner we find an admission by the leader of the Democratic Party in this House that the Democratic Congress can not perform the duties it was elected to perform, can not redeem its promises made to the people, can not perform those functions that the Constitution vests in it, because a few minorities will not permit it to do so. The Speaker admits that this Congress can not economize, will not economize, and therefore the power of Congress must be abdicated.

But that is not what you Democrats wrote in your last national platform. Here is what you said:

> We advocate an immediate and drastic reduction of governmental expenditures by abolishing useless commission and offices, consolidating departments and bureaus and eliminating extrava-

gance, to accomplish a saving of not less than 25 per cent in the cost of the Federal Government.

The President elect did not write that platform, although he did accept it and indorse it 100 per cent. You gentlemen controlled the committee on resolutions at Chicago which drafted that platform, and those within the sound of my voice helped pen the paragraph. There was nothing in there that you advocated a 25 per cent reduction of Federal expenses, provided a few organized minorities would let you. There was nothing in that plank which stated that you intended to pass the buck to the President and make him a dictator in a last desperate attempt to redeem your platform pledges.
* * *

The duty of making a study and recommending a reorganization of the governmental agencies, for which the special Economy Committee was appointed by Speaker Garner last February, a year ago last week, has not been performed. The failure of that performance is not attributable to the Republican President or to the Republican administration or to the Republican membership of this House. The failure of that committee to perform the duties it was advertised to perform lies at the door of the majority of that committee and the Democratic leadership in this House. The extravagances and waste which Representative Crisp said that even the newest Congressman or the merest child could see remain untouched. Why? Because, as Speaker Garner stated on the 8th day of this month, this Congress finds itself incapacitated to perform its sworn duty as representatives of the American people, and then, to make a bad matter worse, it proposes by legislative enactment to do just exactly as Mr. Kent said:

Vote the powers given it by the Constitution

back to the President and abdicate as the legislative branch of the Government.

* * *

Mr. Ludlow: Mr. Speaker, I agree with the able gentleman from Indiana [Mr. Wood] that the proposal before the House to give to the President great powers to reorganize the Government, including the power 'to abolish the whole or part of any executive agency,' is of epochal significance. It does indeed involve the delegation of vast power to the President, but it is the first real approach to an accomplishment for which the whole country is crying in no uncertain terms, namely, the elimination of bureaucracy and its despotic interference with the rights of business and individuals and the stoppage of the astounding wastes and extravagances that are incident to and inseparable from bureaucratic activities. It is the first effort in that direction that promises any results of real value.

* * *

The people have a well-defined impression that the Federal bureaucracy is in no small degree to blame for their ills. * * * They want the President given the power that is sought to be conveyed to him in this conference agreement to abolish nonessential activities and they will hold the President and the Congress jointly responsible if the next few years do not witness the sharpest retrenchment in Government expenditures of any like period in the history of the country.

The average American has more wisdom and knowledge in connection with governmental affairs than he is generally credited with possessing. He knows that the beautiful structure of government handed down to us as a priceless heritage by the founding fathers has become covered with bureaucratic and extraconstitutional malformations until it can no longer function simply and economically

and with direct benefit to the people as it was intended to do, and they want these excrescences stricken off of it. I hold in my hand a most interesting book, which I obtained from the Library of Congress. It is a volume entitled: 'List of Federal Commissions, Committees, Boards, and Similar Bodies Created During the Period September 14, 1901, to March 4, 1929.' This book is not up to date and does not include any commissions created since March 4, 1929. The four years not covered by the book mark an era notable for paternalistic expansion, and necessarily there are many commissions, boards, and so forth, in existence that were born too late to be included in it. Nevertheless, it is amazing to know that the mere cataloguing of the partial and incomplete list of boards and commissions whose names are printed in this volume makes a book of 147 pages.

The people of America expect President-elect Roosevelt to deflate this enormous bureaucratic balloon, and the conference agreement now before the House gives him the tools to do this important job. *I know it has been said by very able gentlemen that the delegation of such enormous power to the executive head of the Government is not in keeping with the democratic philosophy on which this Nation was founded, and I have a great deal of sympathy with that point of view.* But neither is this great, all-powerful, ultra-paternalistic bureaucracy that has grown up in Washington in keeping with the democratic philosophy of government on which this Nation was founded. The founding fathers had the wise idea that all of the *administrative* functions of government should be transacted through the Executive and the departments. There are now 10 great departments, each with a Cabinet official at its head; but added to and superimposed upon this fundamental struc-

ture of Government are bureaucracy's contributions throughout the years, consisting of more than 500 commissions, boards, independent establishments, and whatnot that reach out into every field of paternalistic activity, comprising the most stupendous and costly bureaucracy in history. So, since the ill is extraordinary, it requires an extraordinary cure, and that cure is provided in the pending conference report. * * *

There are those who claim the delegation of so much power to the President is dangerous and who raise the bogey cry of 'dictator', but I am not scared by such hobgoblins. President Wilson was given tremendous war-time power, but it did not make dictators out of his successors in office."

APPENDIX E.

Shipping Board's Report to Congress Dated December 1, 1933.

The Seventeenth Annual Report of the United States Shipping Board to Congress, dated December 1, 1933, for the fiscal year ended June 30, 1933 (House Document No. 124, 73rd Congress, 2nd Session; Government Printing Office, Washington, 1933), submitted by the United States Shipping Board Commissioners (Hutch I. Cone, Chairman, David W. Todd, Vice Chairman, and Gatewood S. Lincoln, Commissioner), states at pages 3 to 5 as follows:

"THE UNITED STATES SHIPPING BOARD

ORGANIZATION

On July 1, 1932, the United States Shipping Board was composed of the following members: T. V. O'Connor, chairman; S. S. Sandberg, vice

chairman; and Commissioners H. I. Cone, Albert H. Denton, Jefferson Myers, and R. K. Smith, there being one vacancy on the Board.

T. V. O'Connor, Great Lakes, was appointed a member June 9, 1921, term 5 years; reappointed June 15, 1926, for a term of 6 years from June 9, 1926; nominated June 20, 1932, for a term to expire June 8, 1938, confirmed on June 20, 1932. Mr. O'Connor was elected vice chairman of the Board on June 16, 1921, and on February 5, 1924, was designated chairman. S. S. Sandberg, Pacific coast, was appointed for a term of 6 years from June 9, 1928, succeeding P. S. Teller; term to expire June 8, 1934. On April 6, 1932, Mr. Sandberg was elected vice chairman of the Board, succeeding E. C. Plummer, deceased. Admiral H. I. Cone (United States Navy, retired), Atlantic coast, was appointed for a term of 6 years from June 9, 1928, succeeding Admiral W. S. Benson (United States Navy, retired); term to expire June 8, 1934. Albert H. Denton, interior, was appointed January 4, 1928, to serve the unexpired term of 6 years from June 9, 1927, succeeding W. S. Hill, resigned; term to expire June 8, 1933. Jefferson Myers, Pacific coast, was appointed June 15, 1926, succeeding B. E. Haney, resigned, for the term expiring June 8, 1931; reappointed on June 3, 1931, during recess of Congress, for a term of 6 years from June 9, 1931, which reappointment was confirmed December 18, 1931; term to expire June 8, 1937. R. K. Smith, Gulf coast, was appointed October 14, 1926, under a recess appointment, to succeed J. H. Walsh, resigned; reappointed December 17, 1926; term expired June 8, 1929; reappointed May 28, 1929, for a term of 6 years from June 9, 1929; term to expire June 8, 1935.

On July 1, 1932, Public No. 212, Seventy-second Congress, cited as the 'Economy Act', became law. This act reorganized the Shipping Board, reducing

the membership from 7 to 3, 1 commissioner to be appointed from the States touching the Atlantic Ocean or a navigable river directly tributary thereto, 1 from the States touching the Pacific Ocean and 1 from the States touching the Gulf of Mexico.

The act also fixed the term of office at 3 years instead of 6 as under the Merchant Marine Act, 1920; the terms of the first commissioners appointed under Public No. 212, Seventy-second Congress, to be for 1, 2, and 3 years respectively, the commissioners appointed thereunder to hold office until their successors should be appointed and qualified. The act also provided that the Shipping Board as constituted on the date of its enactment should continue to function until the date or reorganization of the Board pursuant to the provisions of the act; consequently the Shipping Board as outlined above, T. V. O'Connor, chairman, S. S. Sandberg, vice chairman, and Commissioners Cone, Denton, Myers, and Smith, continued to function until August 1, 1932.

On July 30, 1932, the President of the United States reorganized the Shipping Board in accordance with the provisions of Public No. 212, Seventy-second Congress. The Shipping Board, as reorganized, was composed of the following members: T. V. O'Connor, Atlantic coast, chairman, for a term of 3 years from June 30, 1932; S. S. Sandberg, Pacific coast, for a term of 2 years from June 30, 1932, and Rear Admiral H. I. Cone (U. S. Navy, retired), Gulf coast, for a term of 1 year from June 30, 1932. The newly appointed members of the Shipping Board, as reorganized, took the oath of office on August 1, 1932. Commissioner Sandberg was elected vice chairman of the Board on August 3, 1932. The nominations of the three commissioners were submitted by the President to the Senate on January 3, 1933. As no action was taken by the Senate on these nominations, the re-

cess appointments automatically terminated with the adjournment of the Seventy-second Congress on March 4, 1933.

On March 15, 1933, the President forwarded to the Senate the nominations of Rear Admiral H. I. Cone (U. S. Navy, retired), of Florida, Capt. David W. Todd (U. S. Navy, retired), of New York, and Capt. Gatewood S. Lincoln (U. S. Navy, retired), of California, to be commissioners, and by letter designated Admiral Cone chairman of the board.

On March 20, 1933, the Senate confirmed the nominations and the President on that date made the following appointments: Rear Admiral H. I. Cone (U. S. Navy, retired), of Florida, for the Gulf coast, for a term of 3 years from June 30, 1932, Capt. Gatewood S. Lincoln (U. S. Navy, retired), of California, for the Pacific coast, for a term of 2 years from June 30, 1932, and Capt. David W. Todd (U. S. Navy, retired), of New York, for the Atlantic coast, for a period of 1 year from June 30, 1932. Commissioner Todd was elected vice chairman of the Board on March 20, 1933.

Although Commissioner Todd's term of office expired at midnight June 29, 1933, he continued to function under the provisions of Public No. 212, no successor having been appointed and qualified.

The Shipping Board at the close of business June 30, 1933, was composed of the following: Rear Admiral H. I. Cone (U. S. Navy, retired), chairman, Capt. D. W. Todd (U. S. Navy, retired), vice chairman, and Capt. Gatewood S. Lincoln (U. S. Navy, retired), commissioner."

APPENDIX F.

Quotations from this Court's Opinions.

In *Humphrey's Executor* v. *United States*, 295 U. S. 602, at page 624, this Court, referring to a similar regulatory body (the Federal Trade Commission), said:

> "The commission is to be non-partisan; and it must, from the very nature of its duties, act with entire impartiality. It is charged with the enforcement of no policy except the policy of the law. Its duties are neither political nor executive, but predominantly quasi-judicial and quasi-legislative. Like the Interstate Commerce Commission, its members are called upon to exercise the trained judgment of a body of experts 'appointed by law and informed by experience.' *Illinois Central R. Co.* v. *Interstate Commerce Comm'n*, 206 U. S. 441, 454; *Standard Oil Co.* v. *United States*, 283 U. S. 235, 238-239."

In *U. S. Navigation Co.* v. *Cunard S.S. Co.*, 284 U. S. 474, this Court said (at pp. 480 and 481):

> "The Shipping Act is a comprehensive measure bearing a relation to common carriers by water substantially the same as that borne by the Interstate Commerce Act to interstate common carriers by land. * * * In its general scope and purpose, as well as in its terms, that act closely parallels the Interstate Commerce Act; and we cannot escape the conclusion that Congress intended that the two acts, each in its own field, should have like interpretation, application and effect."

In *United States* v. *B. & O. R. Co.*, 293 U. S. 454, this Court said (at pp. 462-463):

> "The railroads contend that to support the order

certain basic findings are essential; that these were not made; and that, hence, the order is void. * * * But its finding to that effect is essential to the existence of authority to promulgate the rule; and as Congress has made affirmative orders of the Commission subject to judicial review, *The Chicago Junction Case*, 264 U. S. 258, 263-265, the order may be set aside unless it appears that the basic finding was made. *Florida* v. *United States*, 282 U. S. 194."

In *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, this Court said:

"This court has held that an order of the Interstate Commerce Commission is void unless supported by findings of the basic or quasi-jurisdictional facts conditioning its power. *Florida* v. *United States*, 282 U. S. 194, 215; *United States* v. *Baltimore & Ohio R. Co.*, 293 U. S. 454" (p. 504).

"Every change of a rate schedule, either voluntary or involuntary, is a disruption *pro tanto* of the rate structure theretofore prevailing. Plainly such a disruption without more is sufficient reason for prohibiting a change. * * * There is not a fact to indicate that the rates so reduced will be less than compensatory or that capacity for service to the public will be impaired or put in jeopardy" (p. 507).

"The schedules are to be congealed as they exist, because if not congealed they will be fluid, fluidity is change, and change has the potency, if not the promise, of disturbance" (p. 508).

"The point of the decision is not that present rates are sound, but that they must be maintained, even if unsound, for fear of a rate war which might spread beyond control. The danger is illusory" (p. 509).

"One gains at places the impression that the

Commission looked upon the proposed reduction as something more than a disruptive tendency; * * * The difficulty is that it has not said so with the simplicity and clearness through which a halting impression ripens into reasonable certitude. In the end we are left to spell out, to argue, to choose between conflicting inferences. Something more precise is requisite in the quasi-jurisdictional findings of an administrative agency. *Beaumont, S. L. & W. Ry. Co.* v. *United States,* 282 U. S. 74, 86; *Florida* v. *United States,* 282 U. S. 194, 215" (pp. 510-511).

In *Panama Refining Co.* v. *Ryan,* 293 U. S. 388, this Court said:

"The President was not required to ascertain and proclaim the conditions prevailing in the industry which made the prohibition necessary. The Congress left the matter to the President without standard or rule, to be dealt with as he pleased. The effort by ingenious and diligent construction to supply a criterion still permits such a breadth of authorized action as essentially to commit to the President the functions of a legislature rather than those of an executive or administrative officer executing a declared legislative policy" (p. 418).

"The question whether such a delegation of legislative power is permitted by the Constitution is not answered by the argument that it should be assumed that the President has acted, and will act, for what he believes to be the public good. The point is not one of motives but of constitutional authority, for which the best of motives is not a substitute" (p. 420).

"* * * The Congress manifestly is not permitted to abdicate, or to transfer to others, the essential legislative functions with which it is thus vested. Undoubtedly legislation must often be adapted to

complex conditions involving a host of details with which the national legislature cannot deal directly. The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. Without capacity to give authorizations of that sort we should have the anomaly of a legislative power which in many circumstances calling for its exertion would be but a futility. But the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained.

The Court has had frequent occasion to refer to these limitations and to review the course of congressional action. At the very outset, amid the disturbances due to war in Europe, when the national safety was imperiled and our neutrality was disregarded, the Congress passed a series of acts, as a part of which the President was authorized, in stated circumstances, to lay and revoke embargoes, to give permits for the exportation of arms and military stores, to remit and discontinue the restraints and prohibitions imposed by acts suspending commercial intercourse with certain countries, and to permit or interdict the entrance into waters of the United States of armed vessels belonging to foreign nations. These early acts were not the subject of judicial decision and, apart from that, they afford no adequate basis for a conclusion that the Congress assumed that it possessed

an unqualified power of delegation. They were inspired by the vexations of American commerce through the hostile enterprises of the belligerent powers, they were directed to the effective execution of policies repeatedly declared by the Congress, and they confided to the President, for the purposes and under the conditions stated, an authority which was cognate to the conduct by him of the foreign relations of the Government" (pp. 421-422).

"* * * The Court referred with approval to the distinction pointed out by the Supreme Court of Ohio in *Cincinnati, W. & Z. R. Co.* v. *Commissioners,* 1 Ohio St. 88, between 'the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law."

Applying that principle, authorizations given by Congress to selected instrumentalities for the purpose of ascertaining the existence of facts to which legislation is directed, have constantly been sustained. Moreover, the Congress may not only give such authorization to determine specific facts but may establish primary standards, devolving upon others the duty to carry out the declared legislative policy, that is, as Chief Justice Marshall expressed it, 'to fill up the details' under the general provisions made by the legislature. *Wayman* v. *Southard,* 10 Wheat. 1, 43" (p. 426).

"There is another objection to the validity of the prohibition laid down by the Executive Order under §9(c). The Executive Order contains no finding, no statement of the grounds of the President's action in enacting the prohibition. Both §9(c) and the Executive Order are in notable contrast with historic practice (as shown by many statutes and proclamations we have cited in the margin) by which declarations of policy are made by the Con-

gress and delegations are within the framework of that policy and have relation to facts and conditions to be found and stated by the President in the appropriate exercise of the delegated authority. If it could be said that from the four corners of the statute any possible inference could be drawn of particular circumstances or conditions which were to govern the exercise of the authority conferred, the President could not act validly without having regard to those circumstances and conditions. And findings by him as to the existence of the required basis of his action would be necessary to sustain that action, for otherwise the case would still be one of an unfettered discretion as the qualification of authority would be ineffectual? The point is pertinent in relation to the first section of the National Industrial Recovery Act. We have said that the first section is but a general introduction, that it declares no policy and defines no standard with respect to the transportation which is the subject of §9(c). But if from the extremely broad description contained in that section and the widely different matters to which the section refers, it were possible to derive a statement of prerequisites to the President's action under §9(c), it would still be necessary for the President to comply with those conditions and to show that compliance as the ground of his prohibition. To hold that he is free to select as he chooses from the many and various objects generally described in the first section, and then to act without making any finding with respect to any object that he does select, and the circumstances properly related to that object, would be in effect to make the conditions inoperative and to invest him with an uncontrolled legislative power.

We are not dealing with action which, appropriately belonging to the executive province, is not the subject of judicial review, or with the presump-

tions attaching to executive action. To repeat, we are concerned with the question of the delegation of legislative power. If the citizen is to be punished for the crime of violating a legislative order of an executive officer, or of a board or commission, due process of law requires that it shall appear that the order is within the authority of the officer, board or commission, and, if that authority depends on determinations of fact, those determinations must be shown. * * *

We see no escape from the conclusion that the Executive Orders of July 11, 1933, and July 14, 1933, and the Regulations issued by the Secretary of the Interior thereunder, are without constitutional authority" (pp. 431-433).

In *United States* v. *Northern Pacific Railway Co.*, 242 U. S. 190, 193, this Court held that a penalty of $100.00 a day under Section 20 of the Act to regulate commerce was sufficient to make the Statute a penal statute to be strictly construed.

In *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, this Court said (at p. 414):

"The statute provides that any violation of any order of the President issued under §9(c) shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both. We think that these penalties would attach to each violation, and in this view the plaintiffs were entitled to invoke the equitable jurisdiction to restrain enforcement, if the statute and the executive orders were found to be invalid. *Philadelphia Co.* v. *Stimson*, 223 U. S. 605, 620, 621; *Terrace* v. *Thompson*, 263 U. S. 197, 214-216; *Hygrade Provision Co.* v. *Sherman*, 266 U. S. 497, 499, 500."

See also *Ex parte Young*, 209 U. S. 123.